

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURTBY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING**OFFENSE CHARGED**18 U.S.C. Sec. 1341 -- Mail Fraud
(2 counts)18 U.S.C. Sec. 1001 -- False Statements
(9 counts)☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

E-filingMaximum fine \$250,000 or twice gross gain/loss
Maximum supervised release 3 years
Mandatory special assessment \$100/count**PROCEEDING**Name of Complainant Agency, or Person (& Title, if any)
Federal Bureau of Investigation & U.S. Environmental Protection Agency☐ person is awaiting trial in another Federal or State Court, give name of court☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:☐ U.S. Att'y ☐ Defense☐ this prosecution relates to a pending case involving this same defendant☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded underSHOW
DOCKET NO.MAGISTRATE
CASE NO.Name and Office of Person
Furnishing Information on
THIS FORM

Joseph P. Russoniello

☒ U.S. Att'y ☐ Other U.S. AgencyName of Asst. U.S. Att'y
(if assigned)

Stacey Geis

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA09 OCT 20 PM 4:12
DEFENDANT - U.S.U.S. DISTRICT COURT
United States v. Rogelio Lorenzo Lowe (aka Roger Lowe)

DISTRICT COURT NUMBER

CR09**1013****JSW****DEFENDANT****IS NOT IN CUSTODY**

- 1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... If Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☒ NO PROCESS*☐ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

United States District Court

FILED
FOR THE

NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL DIVISION

VENUE: SAN FRANCISCO

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES OF AMERICA,

CR09 v.

1013

JSW

ROGELIO LORENZO LOWE

aka

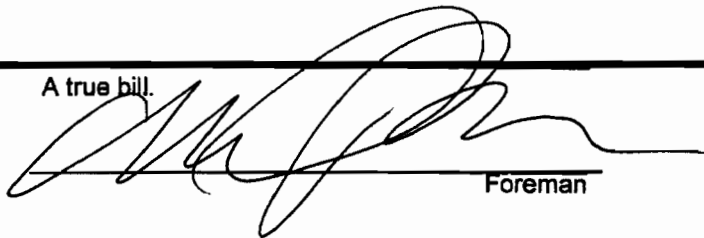
ROGER LOWE

DEFENDANT.

INDICTMENT

18 U.S.C. § 1341-- Mail Fraud
18 U.S.C. § 1001-- False Statements

A true bill.

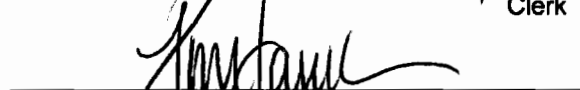
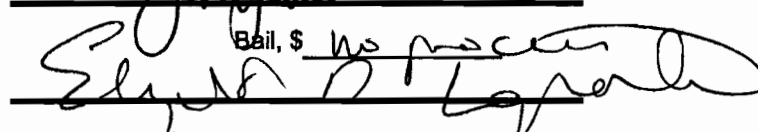


Foreman

Filed in open court this 20th day of

October 2009

Clerk

Bail, \$

no present

1 JOSEPH P. RUSSONIELLO
2 United States Attorney

FILED
09 OCT 20 PM 4:12
E-filing
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,
13

14 Plaintiff,

15 v.

16 ROGELIO LORENZO LOWE,
17 a.k.a. Roger Lowe,

18 Defendant.

CR09

1013

VIOLATIONS:

18 U.S.C. § 1341 - Mail Fraud
18 U.S.C. § 1001 - False Statements

JSW

SAN FRANCISCO VENUE

19 INDICTMENT

20 The Grand Jury charges:

21 INTRODUCTION

22 At all times relevant to this Indictment:

23 1. The defendant, ROGELIO LORENZO LOWE, also known as ROGER LOWE,
24 was the "training director" and owner of E&D Environmental Safety Training, Inc. ("E&D"), a
25 safety consulting company that offered occupational training in English and Spanish for persons
26 who perform asbestos removal. He was licensed by the California Division Department of
27 Industrial Relations Division of Occupational Safety and Health ("Cal/OSHA") to provide such
28 courses.

INDICTMENT

1 2. E&D maintained an office and training facility in Hayward, California.

2 **BACKGROUND AND LEGAL FRAMEWORK**

3 3. Asbestos is a naturally occurring fibrous mineral used in a wide range of goods
4 and products, such as roofing shingles, ceiling and floor tiles, and insulations. The act of
5 removing asbestos carries with it a high risk of creating airborne friable debris. Asbestos is
6 classified as a hazardous substance and is a carcinogen. Exposure to friable asbestos is linked to
7 diseases such as asbestosis, lung cancer, and mesothelioma.

8 4. The Toxic Substance Control Act ("TSCA"), Title 15 U.S.C. § 2601, regulates a
9 variety of toxic chemicals and substances, including asbestos, and is administered by the United
10 States Environmental Protection Agency ("USEPA"). Section 206(a) of TSCA prohibits, among
11 other things, any persons from removing of asbestos from schools and public and commercial
12 buildings unless that person has been trained under a program that has been either approved by
13 USEPA, or by an accredited State whose program has been found by USEPA to be at least as
14 stringent as the Model Accreditation Program ("MAP") developed by USEPA.

15 5. In 1994, USEPA issued a revised MAP (set out in 40 C.F.R. Part 763, Subpart E,
16 Appendix C) that detailed minimum requirements for workers, supervisors, and other persons
17 seeking accreditation to work in the asbestos abatement industry. Similarly, the MAP
18 established minimum requirements for training course providers seeking approval of training
19 courses. Training for asbestos abatement professions is also required under the Asbestos Hazard
20 Emergency Response Act of 1986 ("AHERA"), which is the authority under which USEPA
21 issues the EPA Asbestos MAP.

22 6. California's MAP has not yet been approved by USEPA. Thus, asbestos course
23 providers must be accredited by either USEPA or another state. Asbestos course providers must
24 also comply with Cal/OSHA requirements.

25 7. By law, asbestos course providers are required to keep for a minimum of three
26 years onsite student records, enrollment forms, copies of certificates issued, exams, sign-in
27 sheets, and sign-out sheets. Further, asbestos course providers must issue unique certificate
28 numbers so that there can be a numeric listing of certificates issued statewide. Further, they must

1 maintain all of the student information either in storage or electronically and must maintain
2 copies of training materials and manuals.

3 8. By law, asbestos training providers must inform Cal/OSHA in writing of the
4 starting date, time and location for each scheduled training course in advance.

5 9. Any person seeking accreditation as an asbestos worker must complete a 4-day
6 training course that is eight hours per day, which includes lectures, demonstrations, at least 14
7 hours of hands-on training, individual respirator fit testing, and course review, and then must
8 pass a closed-book examination. A student must complete eight hours of training for each day of
9 training, including breaks and lunch. Training attendance is required for at least the duration
10 specified for each course.

11 10. By law, asbestos course providers shall issue certificates to trainees who complete
12 the training course and pass the closed-book examination. Each certificate is valid for one year.
13 Each certificate must include the name, address and telephone number of the training provider
14 that issued the certificate; the course approval number; the name of the trainee; the dates when
15 the training course started and ended, the date of the examination (if applicable); the certificate
16 expiration date; and the name and signature of the authorized officer of the training course
17 provider with a written statement that the person receiving the certificate has completed the
18 required training and passed the examination (if applicable).

19 11. The course provider must provide the following information to Cal/OSHA with
20 the appropriate fees for each certified trainee within 15 business days after each course
21 examination: the name of the training course and the course approval number; the full name of
22 the certified trainee; the unique certificate number issued by the training provider; the home
23 address of the trainee; and the expiration date of the certificate.

24 12. Cal/OSHA uses this information to develop a roster of individuals who have
25 received a certificate of training from an approved course provider and are qualified to perform
26 asbestos abatement.

1 13. After the initial 32-hour training is complete, asbestos workers and asbestos
2 supervisors are required to take an 8-hour refresher training course every year. A minimum of
3 eight hours of training shall be given for the refresher training course.
4

5 **SCHEME TO DEFRAUD**

6 14. Beginning at a time unknown to the grand jury, but no later than May 2008, and
7 continuing until in or about February 2009, in the Northern District of California and elsewhere,
8 LOWE did knowingly devise and intend to devise a scheme and artifice: (A) to defraud; and (B)
9 to obtain money and property by means of materially false and fraudulent pretenses,
10 representations, and promises, and omissions, and did use the mails to carry out and to attempt to
11 carry out essential parts of his scheme.

12 Manner and Means of the Scheme to Defraud

13 15. As part of the scheme, LOWE advertised his services through his website,
14 www.edest.com, stating on that website, "Our asbestos classes are from 8:00 a.m. to 4:00 p.m.,
15 our Lead classes are from 8:00 a.m. to 5:00 p.m."

16 16. LOWE sent course notifications to Cal/OSHA, representing that asbestos training
17 classes would be held from 8:00 a.m. to 4:00 p.m. LOWE charged approximately \$500-
18 \$600/student for the four day, 8 hour/day initial training course and approximately \$200/student
19 for the one day, 8 hour/day refresher course.

20 17. As part of the scheme, LOWE (a) did not teach the course for the required amount
21 of days and hours per day, including holding classes that were no more than 25 minutes in length,
22 (b) provided answers to the closed-book examinations that students needed to pass to become
23 certified asbestos workers, and (c) forged tests for students that did not show up on a test day.

24 18. As part of the scheme, LOWE issued asbestos training certificates to the students
25 and their employers falsely stating that the students had successfully completed asbestos training
26 and passed the exam in accordance with federal law, specifically, TSCA, when, in fact, LOWE
27 knew they had not.
28

1 19. LOWE then submitted class rosters to Cal/OSHA, representing that these students
2 had successfully completed the training, including passing the closed-book examination, when,
3 in fact, LOWE knew that they had not. Cal/OSHA used and relied on these rosters to add the
4 names of these students to its state list of qualified asbestos workers.

5 20. LOWE sent invoices to the companies employing the students, invoicing the full
6 price of the asbestos training classes, causing these companies to believe that he provided the
7 training for the full length of time and otherwise in compliance with applicable regulations, when
8 LOWE knew, in fact, he had not.

9 21. LOWE received payments from companies employing the students, which the
10 companies would not have made had they known that LOWE had failed to provide the proper
11 training and examination in compliance with applicable regulations.

12 22. Based upon LOWE's materially false representations and material omissions of
13 fact, companies and students routinely paid LOWE fees of up to \$600 per class in exchange for a
14 valid training certificate. These students would then perform asbestos removal without the
15 proper training and accreditation.

16 Execution of the Scheme to Defraud

17 *4-Day Initial Training Asbestos Course*

18 23. One or about July 24, 2008, LOWE sent a course notification to Cal/OSHA that
19 he would be holding a four-day initial asbestos training course in Spanish at E&D's training
20 facility in Hayward, California, on July 25, July 26, July 27, and July 31, 2008.

21 24. Between on or about July 25, 2008, and July 31, 2008, six students (referred to
22 herein as "Student 1" through "Student 6") attended E&D's initial asbestos workers class, or
23 portions thereof.

24 25. On or about July 25, 2008, the first day of the class, LOWE provided no more
25 than five hours of training to Student 1, Student 2, Student 4, Student 5, and Student 6. Student
26 3 did not attend any training that day.

27 26. On or about July 26, 2008, the second day of the class, LOWE provided the six
28 students with no more than six and a half hours of training.

28. On or about July 31, 2008, the fourth day of the class, LOWE provided Student 1, Student 2, Student 3, Student 4, and Student 6, with no more than two and a half hours of training. Student 5 did not attend any training that day.

29. On or about July 31, 2008, LOWE provided Student 1, Student 2, Student 3, Student 4, and Student 6 with an exam score sheet for the final examination, put all answers on the blackboard, and instructed the students to copy the answers to their test sheet. Student 5 did not take the exam and did not complete a score sheet.

10 30. On or about July 31, 2008, LOWE created, or caused to be created, a "Score
11 Sheet" for Student 5, which contained the name of Student 5 and answers to each of the 50
12 multiple-choice questions. Student 5 did not take the exam and did not complete the score sheet.
13 LOWE subsequently maintained this score sheet in E&D's files.

31. On or about July 31, 2008, LOWE created, signed, and issued asbestos training certificates for the six students, falsely certifying that each student had successfully completed the asbestos worker initial course and the exam in accordance with applicable federal regulations, when he knew in fact that the students had not completed the required training hours and had not passed the required closed-book examination.

19 32. On or about August 13, 2008, LOWE mailed to Cal/OSHA a “Student Roster
20 Notification – Validation Form,” reflecting that Students 1 through 6 had taken and passed the 4-
21 day, 8 hour/day initial training course, when he knew the students had not.

22 *One-Day Refresher Course*

23 33. On or about August 1, 2008, LOWE sent a course notification to Cal/OSHA
24 stating that he would be holding a one-day, eight hour asbestos contractor supervisor refresher
25 course at E&D's training facility in Hayward, California, on August 3, 2008.

26 34. On or about August 3, 2008, six students including, Student 7 and Student 8,
27 attended E&D's one day, 8 hour refresher course. LOWE provided no more than 45 minutes of
28 training to all six students.

35. On or about August 3, 2008, LOWE created, signed, and issued asbestos training certificates for the six students, falsely certifying that each student had successfully completed the asbestos contractor supervisor (Refresher) course in accordance with applicable federal regulations, when he knew in fact that the students had not completed the required 8 hours of training.

36. On or about August 13, 2008, LOWE mailed to Cal/OSHA a "Student Roster Notification – Validation Form," reflecting that six students, including Student 7 and Student 8, had taken and passed the asbestos contractor supervisor (Refresher) course, when he knew the students had taken no more than 45 minutes of the required eight hours of instruction.

COUNTS ONE THROUGH TWO: (18 U.S.C. § 1341 – Mail Fraud)

37. The allegations set forth in paragraphs 1-36 above are realleged and incorporated herein by reference.

38. On or about the dates set forth below, in the Northern District of California and elsewhere, to execute the scheme and artifice to defraud set forth above, the defendant,

ROGELIO LORENZO LOWE,

did knowingly cause to be deposited in post offices and authorized depositories the below listed mail matter to be delivered by the United States Postal Service and private and commercial interstate carriers:

Count	Date of Mailing	Mailed From	Mailed To	Item Description
1	08/12/2008	Oakland, CA	Sacramento, CA	Course Roster
2	08/18/2008	Sacramento, CA	San Francisco, CA	Check from Lowe for student registration fees

All in violation of Title 18, United States Code, Section 1341.

COUNTS THREE THROUGH TEN: (18 U.S.C. § 1001 – False Statements)

39. The allegations set forth in paragraphs 1-36 above are realleged and incorporated herein by reference.

40. On or about the dates stated below, in the Northern District of California, the defendant,

ROGELIO LORENZO LOWE,

did knowingly and willfully make and use a materially false writing and document, knowing the same to contain materially false, fictitious and fraudulent statements and entries in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, that each respective student had "successfully completed Section 206 of the Asbestos Worker Initial (Spanish) Course and passed the exam in accordance with (TSCA) Title II (AHERA)," when he knew they had not:

Count	Date	Item Description
3	07/31/2008	Asbestos Training Certificate Number AWIS-070834 (Student 1)
4	07/31/2008	Asbestos Training Certificate Number AWIS-070835 (Student 2)
5	07/31/2008	Asbestos Training Certificate Number AWIS-070836 (Student 3)
6	07/31/2008	Asbestos Training Certificate Number AWIS-070837 (Student 4)
7	07/31/2008	Asbestos Training Certificate Number AWIS-070838 (Student 5)
8	07/31/2008	Asbestos Training Certificate Number AWIS-070839 (Student 6)
9	07/31/2008	"Score Sheet" for Student-5's Multiple-Choice Examination

All in violation of Title 18, United States Code, Section 1001(a)(3).

COUNTS TEN THROUGH ELEVEN: (18 U.S.C. § 1001 – False Statements)

41. The allegations set forth in paragraphs 1-36 above are realleged and incorporated herein by reference.

42. On or about the dates stated below, in the Northern District of California, the defendant,

ROGELIO LORENZO LOWE,

1 did knowingly and willfully make and use a materially false writing and document, knowing the
 2 same to contain materially false, fictitious and fraudulent statements and entries in a matter
 3 within the jurisdiction of the executive branch of the Government of the United States, namely,
 4 that each respective student had "successfully completed Section 206 of the Asbestos Contractor
 5 Supervisor (Refresher) Course and passed the exam in accordance with (TSCA) Title II
 6 (AHERA)," when he knew they had not:

Count	Date	Item Description
10	08/03/2008	Asbestos Training Certificate Number ACSR – 0808109 (Student 7)
11	09/03/2008	Asbestos Training Certificate Number ACSR – 0808110 (Student 8)

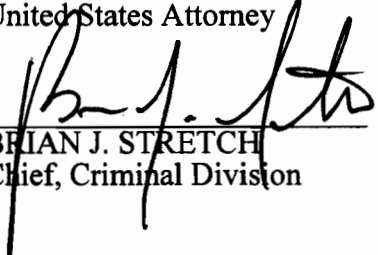
11 All in violation of Title 18, United States Code, Section 1001(a)(3).


13 DATED: October __, 2009

A TRUE BILL

FOREPERSON

17 JOSEPH P. RUSSONIELLO
 18 United States Attorney

19 
 20 BRIAN J. STRETCH
 21 Chief, Criminal Division

22 (Approved as to form: 
 23 AUSA Stacey Geis